

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Natnari Linwong	Team: Team # 2	CCRB Case #: 201114083	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 10/25/2011 12:15 PM	Location of Incident: in front of 2430 Morris Avenue	Precinct: 46	18 Mo. SOL 4/25/2013	EO SOL 4/25/2013	
Date/Time CV Reported Mon, 10/31/2011 9:10 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 10/31/2011 9:10 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Kevin Martin	24921	941068	046 PCT
2. POM Christophe Vaccaro	03957	947671	046 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Ezequiel Burgos	00211	941471	046 PCT
2. POM Charlie Little	28363	938863	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Christophe Vaccaro	Abuse: PO Christopher Vaccaro stopped § 87(2)(b)	
B.POM Kevin Martin	Abuse: PO Kevin Martin stopped § 87(2)(b)	
C.POM Christophe Vaccaro	Abuse: PO Christopher Vaccaro frisked § 87(2)(b)	
D.POM Christophe Vaccaro	Abuse: PO Christopher Vaccaro searched § 87(2)(b)	
E.POM Kevin Martin	Force: PO Kevin Martin used physical force against § 87(2)(b)	
§ 87(4-b) § 87(2)(g)		
§ 87(2)(i)		
§ 87(4-b) § 87(2)(g)		

### Case Summary

On October 21, 2011, § 87(2)(b) called the CCRB and filed a complaint. On October 25, 2011, at approximately 12:15 p.m., § 87(2)(b) was stopped by three plainclothes officers in front of 2430 Morris Avenue in the Bronx. The following allegations resulted:

- **Allegation A – Abuse of Authority: PO Christopher Vaccaro stopped** § 87(2)(b)
- **Allegation B – Abuse of Authority: PO Kevin Martin stopped** § 87(2)(b)
- **Allegation C – Abuse of Authority: PO Christopher Vaccaro frisked** § 87(2)(b)  
§ 87(2)(g)
- **Allegation D – Abuse of Authority: PO Christopher Vaccaro searched** § 87(2)(b)  
§ 87(2)(g)
- **Allegation E – Force: PO Kevin Martin used physical force against** § 87(2)(b)  
§ 87(2)(g)
- § 87(4-b) § 87(2)(g)

This case was initially assigned to Investigator Constantinos Stivaros. Upon his resignation, it was reassigned to Investigator Natnari Linwong for purposes of closure.

### Results of Investigation

#### Civilian Statements

##### Complainant/Victim: § 87(2)(b)

- § 87(2)(b) -old male of multiracial descent, 5'7" tall and 125 lbs. with black hair and dark brown eyes.

#### CCRB Testimony

On November 2, 2011, § 87(2)(b) provided a phone statement (encl. B3). On November 14, 2011, § 87(2)(b) appeared at the CCRB to be interviewed (encl. B4-8). § 87(2)(g)

On October 25, 2011 at approximately 12:15 p.m., § 87(2)(b) left his home at § 87(2)(b) in the Bronx and walked towards the barbershop on 188<sup>th</sup> Street and Crescent Avenue in the Bronx. § 87(2)(b) was wearing jeans and a leather jacket. The jacket was zipped up a small amount. He had a cell phone in one of the front pockets of his jacket and a lollipop in an inside pocket. He also had keys in an unknown pocket. § 87(2)(b) was walking with his hands in his jacket pockets. He did not speak with anyone or stop anywhere as he was walking.

When he was in front of 2430 Morris Avenue, three officers ran up to § 87(2)(b) and all of them told him to get up against the wall and to not move his hands. § 87(2)(b) immediately complied and faced the wall of the building and put his hands up against it. An unknown officer pushed § 87(2)(b)'s wrists against the wall. PO1, identified via investigation as PO Christopher Vaccaro, immediately searched § 87(2)(b)'s pants pockets and his front jacket pockets. PO Vaccaro did not remove anything from § 87(2)(b)'s pockets. As PO Vaccaro was conducting the search, PO2, identified via investigation as PO Kevin Martin, informed § 87(2)(b) that they were searching him because they believed he was concealing a weapon. He also asked § 87(2)(b) if he had a record. After PO Vaccaro searched § 87(2)(b)'s pockets, he unzipped § 87(2)(b)'s jacket and lifted up § 87(2)(b)'s shirt to expose his stomach and waistband. PO Vaccaro put his hands inside the front of § 87(2)(b)'s pants and frisked both the left and right legs under his pants but over the underwear. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) During the search, § 87(2)(b) lowered his hand a little bit from the wall. PO Martin grabbed his right hand by the wrist and pushed it back up. § 87(2)(b) sprained his wrist from this action. § 87(2)(b) was facing the wall during the entire interaction and did not get a good look at the officers.

After the searches were finished, all three officers walked away. § 87(2)(b) asked PO Vaccaro for his name and badge number. PO Vaccaro said both his name and badge number out loud but it was too quick and § 87(2)(b) did not have enough time to write it down. He also did not have a chance to ask PO Martin or PO3, identified via investigation as PO Ezequiel Burgos, for their badge numbers. All three officers then got into a black or dark grey car and drove away.

### **Photo Viewing**

On February 2, 2011, § 87(2)(b) appeared at the CCRB to view photos (encl. B9-18). Before the photos were presented, § 87(2)(b) was informed that the subject officers may or may not be included in the group of photos and the officers' facial hair and hair color may be different in the photos from what he saw on the street.

Eight single photos were shown to § 87(2)(b). The photos were chosen because the officers were working on the date and time of the incident according to the roll calls and the officers' physical descriptions were similar to those provided by § 87(2)(b) during his statement. The first photo was SSA John Scanlon of PBBX AC. The second photo was PO Juan Jimenez of the 46<sup>th</sup> Precinct. The third photo was PO Rafael Tosado of PBBX AC. The fourth photo was PO Charlie Little of the 46<sup>th</sup> Precinct. The fifth photo was PO Frank Siciliano of PBBX AC. The sixth photo was PO Ezequiel Burgos of the 46<sup>th</sup> Precinct. The seventh photo was PO Richard Urena of the 46<sup>th</sup> Precinct. The eighth photo was Sgt. Donald McKenna of the 46<sup>th</sup> Precinct.

§ 87(2)(b) recognized the officer in photo number six, PO Ezequiel Burgos, as the officer that just stood and watched the two white officers interact with him. He signed and dated photo number six. He stated that the officer in photo six was approximately 5'6" tall. According to PO Burgos' photo, he is 5'9" tall. § 87(2)(b) did not recognize any of the officers in the other photos.

### **NYPD Statements:**

#### **Subject Officer: PO CHRISTOPHER VACCARO**

- *PO Vaccaro is a § 87(2)(b)-old white male, 6'4" tall, 215 lbs., with brown hair and blue eyes.*
- *PO Vaccaro was assigned to conditions with PO Kevin Martin, PO Ezequiel Burgos, and PO Charlie Little, in an unmarked black vehicle in plainclothes from 9:30 a.m. to 6:05 p.m. on October 25, 2011.*

### **Memo Book**

PO Vaccaro did not have any entries in his memo book in regard to the incident (encl. C1-2).

### **CCRB Testimony**

On February 23, 2012, PO Vaccaro was interviewed at the CCRB (encl. C3-5). On October 25, 2011, PO Vaccaro was assigned to a special conditions team with PO Martin patrolling for felonies and major crimes in an unmarked black Chevrolet Impala. PO Vaccaro was sitting in the rear passenger's seat of a vehicle being driven on Morris Avenue. While on Morris Avenue at approximately 12:15 p.m., PO Vaccaro observed § 87(2)(b) walking on the sidewalk holding up his waistband with two hands from the center at his belt buckle. PO Vaccaro described § 87(2)(b)'s hands as being firm and tight on the belt buckle as if he was keeping his pants from falling. § 87(2)(b) was walking towards the police vehicle. Upon noticing the vehicle, § 87(2)(b) looked over to the side at a building and increased his walking pace and moved close to the walls of the buildings. All the buildings on that block are known for drugs, weapons and violent crime. PO Vaccaro did not see anything else suspicious on § 87(2)(b) or see any other suspicious activities. PO Vaccaro observed § 87(2)(b) for less than one minute.

Since § 87(2)(b) was holding his waistband tightly, made furtive movements by looking around, and increased his walking pace in addition to being within the confines of the 46<sup>th</sup> Precinct, which is known as a high crime area, PO Vaccaro suspected him of concealing a firearm in his pants. Since firearms are heavy, PO Vaccaro believed the only reason § 87(2)(b) would have his hands tight around his waist would be to hold up a firearm, although he did not see one.

PO Vaccaro approached § 87(2)(b) identified himself as a police officer and asked to see § 87(2)(b)'s hands. § 87(2)(b) refused to move his hands. PO Vaccaro asked him again multiple times to see his hands because he saw his fingers tucked into the center of his waistband. PO Vaccaro believed he may have been holding onto a firearm inside his pants because he was not removing his hands. PO Vaccaro carried his service weapon in the same area and stated a firearm could be concealed in that location. § 87(2)(b) again refused and asked why he had to. Since § 87(2)(b) was not compliant, PO Vaccaro took § 87(2)(b)'s hands out of his pants, turned him around, placed him on the wall, and frisked his waistband and his legs. PO Vaccaro did not enter any of § 87(2)(b)'s pockets or waistband and only touched him from outside his clothing. He had no reason to go inside § 87(2)(b)'s clothing. PO Vaccaro explained to § 87(2)(b) that he was frisked because the manner in which he was walking and holding his pants looked like he was concealing a firearm. PO Martin was nearby to backup PO Vaccaro. At no point was § 87(2)(b)'s hand smacked or slapped or pushed against the wall by anyone.

After the frisk, PO Vaccaro asked § 87(2)(b) for his pedigree information verbally because he did not recall taking an ID and wrote it down so he could fill out a Stop, Question, and Frisk Report. § 87(2)(b) provided it and asked PO Vaccaro for his name and badge number. PO Vaccaro provided his name, badge number, and command to § 87(2)(b) verbally. PO Vaccaro went back to

the vehicle and did not know if § 87(2)(b) asked any other officers for their names or badge numbers. PO Vaccaro then filled out a Stop, Question, and Frisk Report about the incident.

**Subject Officer: PO KEVIN MARTIN**

- *PO Martin is a § 87(2)(b)-old white male, 6'2" tall, 205 lbs., with red hair and hazel eyes.*
- *PO Martin was assigned to conditions with PO Christopher Vaccaro, PO Ezequiel Burgos, and PO Charlie Little, in an unmarked black vehicle in plainclothes from 9:30 a.m. to 6:05 p.m. on October 25, 2011.*

**Memo Book**

PO Martin had no entries in his memo book in regard to this incident (encl. C6-7).

**CCRB Testimony**

On February 23, 2012, PO Martin was interviewed at the CCRB (encl. C8-10). § 87(2)(g)

PO Martin observed § 87(2)(b) walking northbound on Morris Avenue and holding his waistband very tightly by his belt buckle with his right hand and his other hand was free at his side. There was a rectangular bulge, similar to a knife, and did not have a curvature like a gun near his hand by the belt buckle of his waistband. PO Martin refused to approximate the size of the bulge and stated he did not have measuring tape to measure it. PO Martin observed § 87(2)(b) for approximately 30 seconds before stopping him. § 87(2)(b) made no movements before he was stopped and did nothing other than hold his waistband.

PO Vaccaro and PO Martin exited the vehicle. PO Vaccaro approached first and spoke to § 87(2)(b). PO Martin heard PO Vaccaro ask § 87(2)(b) to remove his hand from his waistband multiple times but § 87(2)(b) was being noncompliant. PO Martin approached and held up § 87(2)(b)'s hand against the wall while PO Vaccaro conducted a frisk. PO Martin could not describe the frisk even though he was standing immediately next to PO Martin because he was focusing on § 87(2)(b)'s hand and face. During this time, PO Martin never hit, slammed, or pushed, § 87(2)(b)'s hand against the wall. Information was then taken from § 87(2)(b) but PO Martin did not know how or by whom. The officers got in their vehicle and left the scene.

**Witness Officer: PO EZEQUIEL BURGOS**

- *PO Burgos is a § 87(2)(b)-old Hispanic male, 5'8" tall, 235 lbs., with brown hair and brown eyes.*
- *PO Burgos was assigned to conditions with PO Christopher Vaccaro, PO Kevin Martin, and PO Charlie Little, in an unmarked black vehicle in plainclothes from 9:30 a.m. to 6:05 p.m. on October 25, 2011.*

**Memo Book**

PO Burgos had no entries in his memo book regarding this incident. (encl. C11-12).

**CCRB Testimony**

On February 9, 2012, PO Burgos was interviewed at the CCRB (encl. C13-14). PO Burgos did not recall the incident after he was shown photos of § 87(2)(b) and given a narrative of the incident. He stated he did not conduct any stops or questions during the time of incident.

**Witness Officer: PO CHARLIE LITTLE**

- PO Little is a § 87(2)(b) -old bald black male, 6'0" tall, 258 lbs., with brown eyes.
- PO Little was assigned to conditions with PO Christopher Vaccaro, PO Kevin Martin, and PO Ezequiel Burgos, in an unmarked black vehicle in plainclothes from 9:30 a.m. to 6:05 p.m. on October 25, 2011.

**Memo Book**

PO Little had no entries in his memo book regarding this incident. At 10:30 a.m., he began patrol and his next entry was at 1:30 p.m. when he was on meal at the stationhouse (encl. C15-16).

**CCRB Testimony**

On March 14, 2012, PO Little was interviewed at the CCRB (encl. C17-18). PO Little did not recall the incident after he was shown photos of § 87(2)(b) and given a narrative of the incident.

**Medical Records**

On § 87(2)(b) § 87(2)(b) went to § 87(2)(b) and had his hand examined. § 87(2)(b) stated that his hand was slammed against a building but did not specify how it occurred. He was diagnosed with a sprained wrist (encl. D1-13).

**NYPD Document**

**Stop, Question, and Frisk Report Log**

There is no record of PO Vaccaro, PO Martin, PO Burgos, or PO Little filling out a Stop, Question, and Frisk report regarding this incident (encl. E9-10).

**Status of Civil Proceedings**

§ 87(2)(b) has not filed a Notice of Claim with the City of New York as of August 21, 2012, with regard to the incident (encl. F1).

**Civilian Criminal History**

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

**Civilian CCRB History**

This is the first CCRB complaint filed by § 87(2)(b) (encl. A6).

**Subject Officers' CCRB Histories**

- PO Vaccaro has been a member of the service for three years and there are no substantiated CCRB allegations against him (encl. A1).
- PO Martin has been a member of the service for six years and there are no substantiated CCRB allegations against him (encl. A2-5).

**Conclusion**

**Identification of Subject Officers**

PO Vaccaro and PO Martin admitted to interacting with § 87(2)(b)

**Allegations Not Pled**

§ 87(2)(g)

### **Investigative Findings and Recommendations**

**Allegation A – Abuse of Authority: PO Christopher Vaccaro stopped § 87(2)(b)**

**Allegation B – Abuse of Authority: PO Kevin Martin stopped § 87(2)(b)**

**Allegation C – Abuse of Authority: PO Christopher Vaccaro frisked § 87(2)(b)**

It is undisputed that PO Vaccaro and PO Martin stopped § 87(2)(b) on October 25, 2011 as he was walking on Morris Avenue in the Bronx, and that PO Vaccaro frisked § 87(2)(b).

An officer must have a reasonable suspicion that an individual has committed, will commit, or is committing a crime to engage in a stop. Additionally, innocuous behavior alone will not generate reasonable suspicion that a crime is at hand. People vs. DeBour, 40 N.Y.2d 210 (1976) (encl. 1-11). If the totality of the circumstances of a situation gives rise to founded suspicion that criminality is afoot, the common-law right of inquiry may be invoked. People v. Gerard, 2012 NY Slip Op 2957 (2012) (encl. 12-13). In order to justify a frisk, a bulge must have a shape that can be reasonably mistaken for a weapon. People v. Hill, 569 N.Y.S.2d 227 (1991) (encl. 14-16).

PO Vaccaro suspected § 87(2)(b) of possessing a firearm because he was holding his belt buckle tightly to keep his pants from falling. His suspicion was also heightened when § 87(2)(b) increased his walking pace after seeing the police vehicle. Additionally, the area is a high crime area which also heightened PO Vaccaro's suspicion that § 87(2)(b) was armed. Although PO Vaccaro did not see a gun, he believed § 87(2)(b) was attempting to conceal a heavy object, such as a gun, given that PO Vaccaro carried his service weapon in the same area he believed § 87(2)(b) was concealing the weapon. PO Vaccaro did not observe § 87(2)(b) make any movements aside from hold his waistband tightly and refuse to move his hands when ordered to.

Though PO Martin did not suspect § 87(2)(b) of carrying a gun, he suspected § 87(2)(b) of possessing a knife. PO Martin observed a bulge near § 87(2)(b)'s belt buckle but could not describe the alleged knife other than stating that it was rectangular. He stated there was no curvature in the object and confirmed it was not a gun. Neither officer made any other observations that led them to suspect § 87(2)(b) of a crime or had any additional information regarding § 87(2)(b).

§ 87(2)(g)

**Allegation D – Abuse of Authority: PO Christopher Vaccaro searched § 87(2)(b)**

§ 87(2)(b) alleged he was searched by PO Vaccaro. PO Vaccaro stated he only conducted a frisk, which was confirmed by PO Martin. PO Burgos and PO Little did not recall the incident.

§ 87(2)(g)

**Allegation E – Force: PO Kevin Martin used physical force against § 87(2)(b)**

It is undisputed that PO Martin held § 87(2)(b) against the wall. § 87(2)(b) alleged that PO Martin also smacked his hand against the wall, which both PO Martin and PO Vaccaro denied.

The medical records state that § 87(2)(b) did sprain his wrist from having his hand slammed against a building but there was no detail as to how that occurred.

§ 87(2)(g)

§ 87(4-b) § 87(2)(g)

Team: \_\_\_\_\_

Investigator: \_\_\_\_\_ :  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date